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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,064	12/20/2001	Zdenek Machacek	769-305	9466

7590 06/04/2004

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EXAMINER

SAKRAN, VICTOR N

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 06/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/034,064	Applicant(s) MACHACEK, ZDENEK	
	Examiner VICTOR N SAKRAN	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 8-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/20/01 & 2/6/03</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-4, 6 and 7, are rejected under 35 U.S.C. 103(a) as being unpatentable over Vandenhuevel U. S. Patent No. 6,481,890 in view of Athans et al U. S. Patent No. 6,378,177.

Vandenhuevel discloses the general combination claimed of a reclosable fastener assembly (310) comprising a first profile (337) having a first interlocking member (326) and a flange (327) extending away therefrom and a second profiles (339) having a second interlocking member (328) adapted to interlock with the first

interlocking member and a flange (329) extending away from the second interlocking member. Vandenneuvel also discloses a flange (312) extending away from the reclosable fastener assembly slider (330), wherein said flange (312) including a free end and a bend directing the free end toward the second interlocking member (328) and a peel sealing means (341a) disposed between the inner surfaces of the flange (312) for attaching the inner surfaces of said flange to each other; see Figure 5; column 9, lines 34-51, and column 10, lines 1-14, except that the second flange with the free end extending from the second interlocking member and the flange further having a weakness area at the bend. Athans et al teaches the use of first and second interlocking members and a flange extending from the interlocking members defining a bend provided with a weakness area (42); see Figures 2-5, and column 4, lines 44-51. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the mounting of the second flange (312) in Vandenneuvel by merely attaching said second flange directly to its second interlocking member and further providing its bend with a weakness area with a thinned cross-section so that the flange can be separated when a consumer opens the bag in the manner taught, disclosed and suggested by Athans et al; especially, since such modification involves only routine skill in the art.

Furthermore, Applicant is reminded that in considering the disclosure of a reference, it is proper to take into account not only specific teaching of the reference but also the inferences which one skilled in the art would reasonably be

expected to draw therefrom; see *In re Preda*, 401 F2d 825, 826, 159 USPQ 342,344 (CCPA1968).

As to the particular range of dimensions such as the length of the flange is considered to be no more than an obvious matter of design choice; especially, since it has been held that where the general conditions of a claim are disclosed in the prior art, therefore, discovering the optimum or workable ranges is also involves only routine skill in the art. See *In Re Aller*, 105 USPQ 233.

Claim 5, is rejected under 35 U.S.C. 103(a) as being unpatentable over the same references as applied to claims 1-4, above, and further in view of Giblin et al U. S. Patent No. 6,524,130 who teaches the use of a weakness area in the form of perforated lines (340) in order to open the bag; see Figure 10a; column 4, lines 31-44; column 8, lines 24-31, and claim 1, and to further incorporate such structure in Vandenhoevel by merely forming the weakness area in the form of perforated lines in order to separate its flange for opening its bag in the manner taught, disclosed, and suggested by Giblin et al it would have been obvious to one having ordinary skill in the art at the time the invention was made; especially, since the use of perforation area for a consumer to open a bag is conventional, well known in the art and involves only routine skill in the art.


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant's attention is directed to the art cited herein, and of record, as showing structure related to Applicant's disclosed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTOR N SAKRAN whose telephone number is 703-308-2224. The examiner can normally be reached on 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. swann can be reached on 703-308-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

May 26, 2004


VICTOR N SAKRAN
Primary Examiner
Art Unit 3677